

Message Text

CONFIDENTIAL

PAGE 01 STATE 189837

63

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R 242120Z SEP 73

FM SECSTATE WASHDC

TO AMEMBASSY ASUNCION

AMEMBASSY BOGOTA

AMEMBASSY BRASILIA

AMEMBASSY GUATEMALA

AMEMBASSY PORT AU PRINCE

AMEMBASSY SAN JOSE

AMEMBASSY MANAGUA

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TAGS: PINS, UN

SUBJECT- CONVENTION ON PROTECTION OF DIPLOMATS

1. AS EMBASSY AWARE, 28TH UNGA WILL HAVE BEFORE IT A PROPOSED DRAFT CONVENTION ON THE PROTECTION OF DIPLOMATS DEVELOPED BY THE INTERNATIONAL LAW COMMISSION (ILC). U.S. OBJECTIVE WILL BE THE COMPLETION OF ANY NECESSARY CHANGES

CONFIDENTIAL

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PAGE 02 STATE 189837

IN THE DRAFT CONVENTION IN THE SIXTH (LEGAL) COMMITTEE

AND ITS ADOPTION BY THIS GA. TO ENSURE MAXIMUM POSSIBLE LATIN AMERICAN SUPPORT, WE THINK IT DESIRABLE TO APPROACH THOSE LA'S WHICH IN THE PAST HAVE TENDED TO FAVOR ACTION ON THIS SUBJECT TO EMPHASIZE SPECIAL IMPORTANCE WE ATTACH TO THIS ITEM AND TO GAIN THEIR COOPERATION IN NEW YORK.

2. ONE PARTICULAR PROBLEM OF CONCERN TO SEVERAL LA'S IN CONNECTION WITH THE DRAFT ARTICLES HAS BEEN THAT OF RECONCILING THE OBLIGATION CONTAINED IN THE CONVENTION TO PROSECUTE OR EXTRADITE ANY PERSON ALLEGED TO HAVE COMMITTED A CRIME COVERED BY THE CONVENTION WITH THE RIGHT OF ASYLUM. WE BELIEVE THAT THE RIGHT OF ASYLUM IS FULLY PROTECTED UNDER THE CONVENTION AS PRESENTLY DRAFTED SINCE GOVERNMENT WISHING TO GRANT ASYLUM NOT PRECLUDED FROM DOING SO AS LONG AS IT PROSECUTES UNDER ITS OWN LAW. AT SAME TIME, WE WOULD WANT TO HEAD OFF ANY LA EFFORTS TO AMEND THE CONVENTION TO INCLUDE EXPLICIT DISCLAIMER PROTECTING RIGHT OF ASYLUM. SUCH A DISCLAIMER COULD COMPLETELY UNDERMINE

EFFECTIVENESS OF CONVENTION BY NEGATING OBLIGATION TO EXTRADITE OR PROSECUTE WHERE OFFENSE IS CONSIDERED "POLITICAL" IN CHARACTER.

3. ACCORDINGLY, REQUEST EMBASSY APPROACH HOST GOVERNMENT AT APPROPRIATE LEVEL AND MAKE FOLLOWING POINTS:

(A) USG ATTACHES GREAT IMPORTANCE TO ADOPTION DURING 28TH GA OF A CONVENTION ON PROTECTION OF DIPLOMATS. WE UNDERSTAND HOST GOVERNMENT SHARES OUR VIEW THAT THIS AN IMPORTANT AND NECESSARY MEASURE, AND WE ASSUME IT WILL SUPPORT EXPEDITIOUS HANDLING OF THIS ITEM AND RESIST ANY EFFORTS THAT MAY BE MADE TO POLITICIZE MATTER. U.S. EXPECTS SIXTH COMMITTEE TO GIVE VERY HIGH PRIORITY TO COMPLETION OF CONVENTION AND HOPES THERE WILL BE NO DELAY IN COMPLETING WORK ON ANY TECHNICAL CHANGES IN CONVENTION WHICH MAY BE NECESSARY TO GAIN WIDEST POSSIBLE SUPPORT.

(B) WE BELIEVE ILC DRAFT PROVIDES EXCELLENT BASIS FOR DISCUSSION AND WOULD RESIST ANY FUNDAMENTAL CHANGES IN APPROACH REFLECTED IN THAT DRAFT. HOWEVER, WE RECOGNIZE CONFIDENTIAL

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PAGE 03 STATE 189837

THAT MANY GOVERNMENTS FEEL THERE IS NEED FOR CHANGES OF A TECHNICAL NATURE, AND WE ARE PREPARED TO COOPERATE TO ENSURE THAT SERIOUS LEGAL AND PRACTICAL CONCERNS ARE MET.

(C) A MATTER OF SPECIAL CONCERN TO MANY LATIN AMERICAN STATES WILL BE THE ISSUE OF ASYLUM AND MANNER IN WHICH IT RELATES TO THE CONVENTION. ARTICLE 6 OF THE CONVENTION PROVIDES THAT A "STATE PARTY IN WHOSE TERRITORY" AN

"ALLEGED OFFENDER IS PRESENT SHALL, IF IT DOES NOT EXTRADITE HIM, SUBMIT, WITHOUT EXCEPTION WHATSOEVER AND WITHOUT UNDUE DELAY, THE CASE TO ITS COMPETENT AUTHORITIES FOR THE PURPOSE OF PROSECUTION, THROUGH PROCEEDINGS IN ACCORDANCE WITH THE LAWS OF THAT STATE." ARTICLE 2 REQUIRES EACH STATE PARTY TO INCLUDE AS CRIMES UNDER ITS DOMESTIC LAW THE OFFENSES COVERED BY THE CONVENTION, WHETHER COMMITTED WITHIN OR OUTSIDE ITS TERRITORY. A STATE PARTY WHICH DID NOT WISH TO EXTRADITE, WHETHER BECAUSE IT HAD GRANTED ASYLUM OR FOR ANY OTHER REASON, WOULD NOT BE IN VIOLATION OF ITS OBLIGATIONS UNDER THE CONVENTION SO LONG AS IT SUBMITTED THE CASE FOR PROSECUTION AS PROVIDED IN ARTICLE 6. WHILE WE BELIEVE THIS IS CLEAR IN THE TEXT, WE WOULD BE PREPARED TO ESTABLISH AN UNEQUIVOCAL NEGOTIATING HISTORY TO THIS EFFECT IN THE GA IF NECESSARY. WHAT WE WISH TO AVOID IS THE POSSIBILITY OF AMENDMENTS WHICH, BY EXPLICITLY DISCLAIMING ANY EFFECT ON THE RIGHT OF ASYLUM, MIGHT APPEAR TO CREATE AN EXCEPTION TO THE OBLIGATION TO EXTRADITE OR PROSECUTE. WE BELIEVE IT IS

POSSIBLE THAT SOME LA'S MAY MAKE SUCH PROPOSALS, AND WE HOPE HOST GOVERNMENT WILL PROVIDE ASSISTANCE IN RESISTING ANY AMENDMENTS RE ASYLUM WHICH COULD UNDERMINE EFFECTIVENESS OF CONVENTION.

4. FOR BRASILIA, ASUNCION, GUATEMALA AND PORT AU PRINCE. HOST GOVERNMENTS TERMINATED THEIR PARTICIPATION IN NEGOTIATIONS ON OAS TERRORISM CONVENTION WHEN IT BECAME CLEAR THAT COVERAGE OF THAT CONVENTION WOULD BE LIMITED TO ACTS OF VIOLENCE AGAINST DIPLOMATS. WE TOOK POSITION THEN, AND CONTINUE TO BELIEVE, THAT MEASURES DEALING EFFECTIVELY WITH THIS SPECIFIC PROBLEM ARE IMPORTANT AND USEFUL STEP
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PAGE 04 STATE 189837

TOWARD OVERALL CONTROL OF PROBLEM OF POLITICAL VIOLENCE. WOULD APPRECIATE REPORT FROM EMBASSY OF ANY INDICATION THAT HOST GOVERNMENT MIGHT FAIL TO GIVE FULL SUPPORT TO CONVENTION ON PROTECTION OF DIPLOMATS ON GROUNDS THAT IT TOO NARROW IN SCOPE.

5. FOR ALL ADDRESSEES. WHILE HISTORY OF OAS NEGOTIATIONS DOES NOT PROVIDE CLEAR INDICATION AS TO POSITIONS HOST GOVERNMENTS LIKELY TO TAKE ON ASYLUM ISSUE, WE BELIEVE THEIR GENERAL ATTITUDES ON THIS SUBJECT WILL INCLINE THEM TOWARDS SUPPORT OF EFFORT TO PREVENT INTRODUCTION OF LOOPHOLES IN EFFORT TO CLARIFY RIGHT OF ASYLUM.

6. FYI: OAS TERRORISM CONVENTION CONTAINED FOLLOWING PROVISIONS DESIGNED TO PROTECT RIGHT OF ASYLUM:

"NONE OF THE PROVISIONS OF THIS CONVENTION SHALL BE
INTERPRETED SO AS TO IMPAIR THE RIGHT OF ASYLUM."
(ARTICLE 6)

"IN ANY CASE, IT IS THE EXCLUSIVE RESPONSIBILITY OF
THE STATE UNDER WHOSE JURISDICTION OR PROTECTION SUCH
PERSONS ARE LOCATED TO DETERMINE THE NATURE OF THE
ACTS AND DECIDE WHETHER THE STANDARDS OF THIS CONVEN-
TION ARE APPLICABLE." (ARTICLE 3)

ILC DRAFT CONVENTION CONTAINS NO COMPARABLE PROVISIONS. RUSH

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